

**OPINION
50-171**

September 29, 1950 (OPINION)

TAXATION

RE: Crude Oil Pipe Line Passing Through State Not Subject to Use Tax

Your letter of September 27, 1950, addressed to the Attorney General has been received and contents duly noted.

You state that the Interprovincial Pipe Line Company, a Canadian corporation, and your client, Lakehead Pipe Line Company, Inc., a Delaware corporation, a subsidiary of the Interprovincial Pipe Line Company, are building an 1100 mile pipe line for the transmission of crude petroleum from the oil fields near Edmonton, Alberta to a Lakehead dock at Superior, Wis. This pipe line will enter North Dakota from Canada in Pembina County and will run approximately 28 miles in North Dakota, and will then traverse Minnesota and Wisconsin to Superior. There are no facilities within the State of North Dakota for receiving or discharging petroleum from the pipe line.

It has been suggested that your client, Lakehead Pipe Line, is subject to the payment of a use tax on materials and supplies used in the construction of the pipe line in North Dakota. This matter was discussed a short time ago with Tax Commissioner John Gray and this office.

Chapter 57-40, NDRC 1943 deals with the subject "Use Tax." Subdivision 2 of Section 57-4001 defines "use" as follows:

'Use' shall mean the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of that property in the regular course of business;"

The definition of "use" would apply to the Lakehead Pipe Line since it exercises power over the property consisting of pipe line and other material which goes into its construction and the company would be subject to use tax unless such property comes within one of the exemptions enumerated in Section 57-4003. Subdivision 3 of said section exempts tangible personal property used in interstate transportation or interstate commerce.

The pipe line enters North Dakota in Pembina County, crosses Minnesota and Wisconsin to Superior. The purpose or use of this pipe line is to transport crude petroleum from Canada through a portion of North Dakota, through Minnesota and into Wisconsin to Superior. Tangible personal property is transported through this pipe line through three states, North Dakota, Minnesota and Wisconsin. The crude petroleum is transported 28 miles in this pipe line in North Dakota, but there are no facilities for either receiving and delivering

petroleum from said line in the State of North Dakota.

From the facts stated, it is the opinion of this office that the pipe line referred to herein is an interstate transportation pipe line and that the materials used in its construction are, therefore, not subject to the use tax imposed by Section 57-4001, NDRC 1943.

WALLACE E. WARNER

Attorney General